SUPREME COURT

THE ANGLO-AMERICAN PROVISION COMPANY,
PLAINTIFF IN ERROR,

vs.

DAVIS PROVISION COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF [illegible]

FILED JUNE 6, 1892.

(15,876.)

(18,575.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 64.

THE ANGLO-AMERICAN PROVISION COMPANY, PLAINTIFF IN ERROR,

vs.

DAVIS PROVISION COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 18, 1903.

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a In the Court of Appeals.

On Appeal from the Appellate Division of the Supreme Court for the First Judicial Department.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Appeal Book.

Weiser & Bridges, attorneys for plaintiff-appellant, 35 William street, New York city.

Smith, Conway & Weed, attorneys for defendant-respondent, 21 Cortlandt street, New York city.

1 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Statement under Rule 41.

This action was commenced on November 21st, 1899, by service of the summons and complaint on that day.

Issue was finally joined by service of a demurrer to the complaint on December 20th, 1899.

The names of the parties in full are as stated above.

There has been no change in the parties or their attorneys since the commencement of the action.

The trial judge delivered no other opinion other than as heretofore set forth.

2 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

SIRS: Please take notice that the plaintiff above-named hereby appeals to the appellate division of this court for the first department from the decision and judgment heretofore, and on the 21st day of February, 1900, entered in the office of the clerk of the county of New York, dismissing the complaint of the plaintiff, with costs, and from each and every part of said decision and judgment.

Dated New York, February 23d, 1900.

WEISER & BRIDGES,
Attorneys for Plaintiff-Appellant, 35 William Street, New York City, Borough of Manhattan.

To Smith, Conway & Weed, Esqrs., attorneys for defendant-respondent; William Sohmer, Esq., clerk of the county of New York.

3 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant. } Summons.

New York is the county in which the plaintiff desires the trial of this action.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, November 20, 1899.

WEISER & BRIDGES,
Plaintiff's Attorneys.

Office and post-office address, No. 35 William St., New York city, borough of Manhattan.

4 New York Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The plaintiff above named, by Weiser & Bridges, its attorneys, complains of the above-named defendants, and alleges as follows:

First. That both plaintiff and defendant are foreign corporations, organized and existing under the laws of the State of Illinois.

Second. That on or about the fourth day of November, 1893, plaintiff duly commenced an action in the circuit court of Cook county, in the State of Illinois, which said court is a court of general jurisdiction duly created by the laws of said State, against the defendant, by process of summons duly issued in said action; that defendant duly appeared in said action by its attorneys, and that such proceedings were thereupon duly had in said action; that on or about the sixth day of January, 1899, the plaintiff recovered a judgment, which was duly given by said court, against the defendant for the sum of $5,049.98, no part of which has been paid.

Third. That by the laws of said State the interest upon a judgment runs at the rate of five per centum per annum.

5 Wherefore, plaintiff demands judgment against the defendant for the sum of $5,049.98, with interest thereon from the sixth day of January, 1899, together with the costs of this action.

WEISER & BRIDGES,
Attorneys for Plaintiff.

CITY AND COUNTY OF NEW YORK, ss:

Henry Wilson Bridges, being duly sworn, deposes and says: I am a member of the firm of Weiser & Bridges, attorneys for The Anglo-American Provision Company, plaintiff in this action. I have read the foregoing complaint and know its contents. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The sources of my knowledge, and the grounds for my belief are a certified copy of the record of proceedings had in the circuit court of Cook county, State of Illinois, in the action entitled "Anglo-American Provision Company *v.* Davis Provision Company," and correspondence and interviews had with the agent of said Anglo-American Provision Company. The reason why the complaint is not verified by the plaintiff, is that the said plaintiff is a foreign corporation of which no officer is at present in the city or State of New York, in which city and State I reside and have my office.

HENRY WILSON BRIDGES.

Sworn to before me this 20th day of November, 1999.

K. BERRALL,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

6 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The defendant demurs to the complaint herein and for the grounds of its demurrer states that it appears upon the face of the complaint,

First. That the court has not jurisdiction of the person of defendant.

Second. That the court has not jurisdiction of the subject of the action.

Third. That the complaint does not state facts sufficient to constitute a cause of action.

Fourth. That the plaintiff and defendant are both foreign corporations and the action is not brought to recover damages for a cause of action for the breach of a contract made within the State or relating to property situated within the State at the time of the making thereof; that it is not brought to recover real property situated within the State, or a chattel which is replevied within the State; that the cause of action did not arise within the State.

Fifth. That the action is not brought for any of the causes
7 of action specified in section 1780 of the Code of Civil Procedure, upon which one foreign corporation is authorized to maintain an action against another foreign corporation within the

State, and plaintiff has not authority to maintain the action and the court has not jurisdiction thereof.

Wherefore, defendant asks that the complaint be dismissed, with costs.

SMITH, CONWAY & WEED,
Attorneys for Defendant, 21 *Courtlandt Street*,
New York City, N. Y.

8 At a special term of the supreme court of the State of New York, in and for the county of New York (part III), held at the county court house, in the borough of Manhattan, State of New York, on the — day of February, 1900.

Present: Hon. John J. Freedman, justice.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

The issues at law in this action, arising upon the demurrer to the complaint, coming on to be tried before me, at a special term of this court, held at the court house, in the borough of Manhattan, State of New York, on the 5th day of February, 1900, and after hearing Thomas F. Conway, Esq., of counsel for the said defendant, in support of the said demurrer, and Henry Wilson Bridges, Esq., counsel for the plaintiff in opposition; and due deliberation had thereon, I do make the following decision and find the following conclusions of law:

First. That the court has not jurisdiction of the person of defendant.

Second. That the court has not jurisdiction of the subject of the action.

9 *Third.* That the complaint does not state facts sufficient to constitute a cause of action.

Fourth. That the plaintiff and defendant are both foreign corporations, and the action is not brought to recover damages for a cause of action for a breach of a contract made within the State, or relating to property situated within the State at the time of the making thereof; that it is not brought to recover real property situated within the State, or a chattel which is replevied within the State; that the cause of action did not arise within the State.

Fifth. That the action is not brought for any of the causes of action specified in section 1780 of the Code of Civil Procedure, upon which one foreign corporation is authorized to maintain an action against another foreign corporation within this State, and plaintiff has not authority to maintain the action and this court has not jurisdiction thereof.

And I accordingly decide that the said demurrer of said defendant to the complaint of the plaintiff be sustained, and I direct that final judgment be entered in the above-entitled action, dismissing the

complaint of the plaintiff, with costs in favor of defendant and against plaintiff, to be taxed by the clerk of this court.

Ent.

JNO. J. FREEDMAN, *J.*

10 Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff, *against* DAVIS PROVISION COMPANY, Defendant. } Judgment February 21st, 1900.

The above defendant having demurred to the complaint of the plaintiff, and the issues raised by said demurrer having been tried at a special term of this court, part III, held by Mr. Justice Freedman, and a decision having been rendered by said justice sustaining said demurrer and dismissing the complaint with — dollars, extra allowance and taxable costs, and said decision having directed final judgment accordingly;

Now, upon reading and filing the summons, complaint and demurrer herein, and said decision; and upon motion of Smith, Conway & Weed, attorneys for defendant,

It is adjudged, that the demurrer of the defendant to said complaint be, and it hereby is sustained, and the complaint of plaintiff be, and it hereby is, dismissed, with forty-five and 50/100 dollars costs to said defendant against said plaintiff, and that defendant have execution therefor.

Enter.

J. J. F.

11 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff, *against* DAVIS PROVISION COMPANY, Defendant. }

Memorandum of Mr. Justice Freedman.

The defendant is entitled to judgment upon the demurrer to the complaint, with costs.

COUNTY OF NEW YORK, *ss:*

Charles Weiser, being duly sworn, deposes and says: I am one of the attorneys for the plaintiff in this action. No opinion in writing other than the above memorandum has been made in this action by the justice, before whom the issue of law herein was tried.

CHARLES WEISER.

Sworn to before me this 23d day of February, 1900.

EDWIN B. WOODS,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

12 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-, Appellant,
against
DAVIS PROVISION COMPANY, Defendant-, Respondent.

It is hereby stipulated that the foregoing are true copies of the judgment roll and notice of appeal, which are all the papers upon which this case is to be heard, and certification thereof by the clerk is hereby waived.

Dated New York, February —, 1900.

WEISER & BRIDGES,
Plaintiff's Attorneys.
SMITH, CONWAY & WEED,
Defendant's Attorneys.

13 Supreme Court, Appellate Division, First Department.

MARCH, 1900.

Chas. H. Van Brunt, P. J.; Edward Patterson, Morgan J. O'Brien, George L. Ingraham, Chester B. McLaughlin, JJ.

ANGLO-AMERICAN PROVISION COMPANY, Appellant,
against
DAVIS PROVISION COMPANY, Respondent. } No. 2047.

Appeal from interlocutory judgment sustaining demurrer to complaint.

Henry Wilson Bridges, for appellant.
Thomas F. Conway, for respondent.

O'BRIEN, *J.*:

The complaint seeks to establish a judgment obtained in the circuit court of Cook county, State of Illinois, under the laws of which State both corporations, plaintiff and defendant, were organized and now exist. The demurrer thereto was sustained on the ground that the court had no jurisdiction, both parties being foreign corporations.

We do not regard the question of whether one foreign corporation can sue another corporation in our courts as any longer open to discussion. As stated in the concurring opinion of Judge Van Brunt in Barker *v.* Cunard Steamship Co. (91 Hun., 500):

14 "In respect to foreign corporations the supreme court has never been a court of general jurisdiction. It has no jurisdiction of actions against foreign corporations, except such as is conferred by statute. Hence, the rule which ordinarily applies to this court as a court of general jurisdiction cannot obtain in actions against foreign corporations. It must appear somewhere in the record that jurisdiction exists." See also Ladenburg *v.* Commercial Bank of Newfoundland (87 Hun., 269).

By section 1780 of the Code of Civil Procedure, it is provided: "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only. * * * 3d. Where the cause of action arose within the State." Though it be conceded that an action on a foreign judgment is an action on contract, and though a foreign judgment may be enforced in this State, it does not follow that a suit brought by a foreign corporation on a foreign judgment is an action which arises in this State.

Nor do we think that there is force in the further contention that section 1780 of the code is unconstitutional as violative of the provision of the United States Constitution, that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." The present case is analogous to that of Chemung Canal Bank *v.* Lowery (93 U. S., 72), where a State statute of limitations was attacked as repugnant to the same clause of the Constitution of the United States as is here brought before us, and it was held that the law in question did not produce any unconstitutional discrimination. Furthermore, it may be said that, in the case of a foreign corporation presenting such a question as this, this State has expressly held that, as such a corporation comes within our jurisdiction only by permission, express or implied, it assents to certain conditions, and, even if those conditions were unconstitutional, it would be estopped from attacking them (People *v.* Fire Ass'n, 92 N. Y., 326).

The other constitutional question raised is disposed of by the case of Robinson *v.* Oceanic Steam Nav. Co. (112 N. Y., 315, at page 324), as follows: "It is claimed, however, that section 1780 of the code, so far as it discriminates between resident and non-resident plaintiffs, is repugnant to section 2 of article 4 of the Federal Constitution, wherein it is provided that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. This section makes no discrimination between citizens, but between residents and non-residents. Without attempting to define the full scope of the constitutional provision, it is sufficient to say that it has no application to a case like this, and there are numerous decisions to that effect." In the same opinion the learned judge quotes with approval what was said in Davidsburgh *v.* Knickerbocker Life Ins. Co. (90 N. Y., 526): "There are, no doubt, many cases where the court, having jurisdiction over the subject-matter, may proceed against a defendant who voluntarily submits to its decision; but where the State prescribes conditions under which a court may act, those conditions cannot be dispensed with by litigants, for in such a case the particular condition or status of the defendant is made a jusisdictional fact."

Judgment affirmed with costs.

All concur.

16 At a term of the appellate division of the supreme court, first department, held at the court house of said appellate division in the county of New York, on the 12th day of April, 1900.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. George L. Ingraham, Hon. Chester B. McLaughlin, associate justices.

ANGLO-AMERICAN PROVISION COMPANY, Appellant,
against
THE DAVIS PROVISION COMPANY, Respondent.

A judgment having been entered in the above-entitled action in the office of the clerk of the county of New York on February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint, and dismissing said complaint, with forty-five and 50/100 dollars costs; and plaintiff having appealed from said judgment to the appellate division of the supreme court, first department, and the appeal coming on to be heard; and after hearing Henry Wilson Bridges, of counsel for appellant, in support of the appeal, and Thomas F. Conway, of counsel for respondent, in opposition thereto, and due deliberation having been had;

17 Now, upon motion of Smith, Conway & Weed, attorneys for respondent-defendant,

It is ordered, that said judgment so appealed from be, and the same hereby is, affirmed, with costs to respondent.

N. Y. Supreme Court, New York County.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
THE DAVIS PROVISION COMPANY, Defendant-Respondent.
} Judgment.

The plaintiff having appealed to the appellate division of the New York supreme court, first department, from a judgment entered in the above-entitled action in the office of the clerk of the county of New York February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint, and dismissing the complaint with forty-five and 51/100 ($45.51) dollars costs; and an order having been made by said appellate division affirming with costs the said judgment so appealed from, and the costs having been taxed by the clerk of the county of New York, by consent, at sixty-seven and 55/100 dollars ($67.55);

Now, upon motion of Smith, Conway & Weed, attorneys for defendant-respondent, it is

Adjudged, that the judgment entered in the office of the
18 clerk of the county of New York herein, on February 21st, 1900, sustaining defendant's demurrer to plaintiff's complaint be, and the same hereby is, affirmed;

And it is further adjudged, that defendant recover of plaintiff, as and for the costs of said appeal, the sum of $67.55, and that defendant have execution therefor.

May 4th, 1900.

WM. SOHMER, *Clerk.*

Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
THE DAVIS PROVISION COMPANY, Defendants.

SIRS: Please take notice that the above-named plaintiff hereby appeals to the court of appeals from the order of the appellate division of the supreme court for the first department, dated the 24th day of April, 1900, and the judgment entered thereon in the office of the clerk of the county of New York on the fourth day of May, 1900, affirming the judgment entered heretofore and on the 21st day of February, 1900, in the office of the clerk of the county of New York, sustaining the demurrer of the defendant to plain-
19 tiff's complaint herein, and from each and every part of the said order and judgment.

Dated New York, October 6th, 1900.

WEISER & BRIDGES,
Plaintiff's Attorneys, 35 *William Street, New York City, (Borough of Manhattan).*

To William Sohmer, Esq., clerk of the county of New York; Messrs. Smith, Conway & Weed, attorneys for defendant.

STATE OF NEW YORK, *County of New York*, } *ss.:*

I, William Sohmer, clerk of the said county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original copy, appellate division, order, judgment and notice of appeal, Anglo American Provision Company, — The Davis Provision Company, on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 12th day of October, 1900.

WILLIAM SOHMER, *Clerk.*

20 Supreme Court, County of New York.

ANGLO-AMERICAN PROVISION COMPANY, Plaintiff,
against
DAVIS PROVISION COMPANY, Defendant.

It is hereby stipulated that the foregoing are true copies of the notice of appeal to the court of appeals, the order of the appellate

division of the supreme court, and the judgment entered thereon and all the papers on which the court below acted in making such order and determination, and certification thereof by the clerk of New York county is hereby waived pursuant to the provisions of section 3301 of the Code of Civil Procedure.

Dated New York, October 24th, 1900.

WEISER & BRIDGES,
Attorneys for Plaintiff.
SMITH, CONWAY & WEED,
Attorneys for Defendant.

21 Form 5.

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 28th day of January, in the year of our Lord one thousand nine hundred and two, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur January 29th, 1902.

22 ANGLO AMERICAN PROVISION COMPANY, Appellant,
ag'st
DAVIS PROVISION COMPANY, Respondent.

Be it remembered, that on the 25th day of October, in the year of our Lord one thousand nine hundred Anglo American Provision Company, the appellant in this action, came here into the court of appeals, by Weiser and Bridges, its attorneys, and filed in the said court a notice of appeal and return thereto from the order & judgment of the appellate division of the supreme court in and for the first judicial department. And Davis Provision Company, the respondent in said action, afterwards appeared in said court of appeals by Smith, Conway and Weed, its attorneys.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

23 Whereupon the said court of appeals having heard this cause argued by Mr. Henry Wilson Bridges, of counsel for the appellant, and by Mr. Frank Smith, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the appellate division of the supreme court appealed from herein be, and the same hereby is affirmed, with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

24 Therefore, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgement of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *January 29th*, 1902.

Seal State of New York Court of Appeals.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein, attached thereto.

W. H. SHANKLAND, *Clerk.*

25 ANGLO-AMERICAN PROVISION COMPANY, Appellant,
v.
DAVIS PROVISION COMPANY, Respondent.

(Decided January 28th, 1902.)

Henry Wilson Bridges for appellant.
Frank E. Smith for respondent.

GRAY, *J.:*

The plaintiff and the defendant are foreign corporations, organized under the laws of the State of Illinois, and the action is brought upon a judgment; which is alleged in the complaint to have been recovered against the defendant in a court of general jurisdiction, within that State. The cause of action, however, upon which the judgment was rendered, is not set forth. The defendant demurred to the complaint; specifying, as grounds, a want of jurisdiction in the court, as to the person of the defendant and as to the subject-matter, and that the complaint did not state facts sufficient to constitute a cause of action. The demurrer has been sustained below and the complaint was dismissed.

Upon the appeal, which the plaintiff now takes to this court from the judgment of dismissal, we have presented questions of the construction which is to be given to the provisions of section 1780 of our Code of Civil Procedure and of how far its provisions are affected, or controlled, by section I of article IV of the Constitution of the United States.

Section 1870 provides that, "an action against a foreign corporation may be maintained by another foreign corporation, * * * in one of the following cases only: * * * 3. Where the cause of action arose within the State."

26 The demurrer admits the recovery of a valid judgment and I shall assume that it was upon a cause of action generally valid. The questions are both interesting and important; but I think that the legal principles, which should guide the decision, are well settled.

The appellant's contention, in effect, is that the cause of action set forth in the complaint arose within this State; because an action on a foreign judgment is an action on a contract, which is to be performed in this State, as everywhere within the United States, where the judgment debtor is called upon to pay it. It is somewhat difficult to appreciate the force of the reasoning, which resolves a judgment, that has been rendered between the parties within a foreign jurisdiction, into a cause of action that "arose within the State." Doubtless, a judgment, as debt of record, is a contract obligation of the highest nature. The cause of action has become merged and the law implies the obligation and the promise of the defendant to pay; but it is not a contract in the sense of any engagement of the parties with each other. The element of mutuality is wanting; for *judicium redditur in invitum.* (Bidleson *v.* Whytle, 3 Burrows, 1545; McCoun *v.* N. Y. C. & H. R. R. R. Co., 50 N. Y. 176; Gutta Percha & R. Mfg. Co. *v.* Mayor, etc., of Houston, 108 *ib.* 276.) We may concede that an action on a foreign judgment is an action *ex contractu;* but that there is, within the meaning of the statute, a cause of action which arose within the State, permits of grave doubt and puts a severe strain upon what seems to be plain language. If a judgment is a new debt, (Freeman on Judgments, sec. 217), it was created and, therefore, as it seems to me, arose where
27 the judgment was had. But, if we admit that the failure to pay a judgment is a breach of the defendant's obligation, which warrants the plaintiff in enforcing it by an action wherever the defendant may be reached by process, that general right may, nevertheless, be subjected to limitations, when sought to be exercised in other jurisdictions than that in which the plaintiff is domiciled; such as appear to have been imposed by our statute. The code prescribes that, when an action is between two foreign corporations, the cause of action must be one which arose within the State and a judgment recovered in the foreign jurisdiction is not such by any necessary implication. A statute is to be given that meaning which the ordinary reading of its language warrants and, thus read, the cause of action mentioned in section 1780 must be one local in its nature, with reference to the State. The code is not dealing with legal fictions. (McCoun *v.* N. Y. C. & H. R. R. R. Co. *supra.*) I am of the opinion that a foreign judgment, which has failed of enforcement in the jurisdiction where rendered, cannot be regarded, when sued upon within the State, as included within the class described by this section; however, in legal contemplation, it may be regarded as an unperformed obligation of the judgment debtor. Authorities seem hardly necessary, in support of the proposition: but the principle appears in the cases, to which we have been referred. (Barnes

v. Kenyon 2 Johns. Ca. 381; Thelwall *v.* Yelverton, 16 C. B. (N. S.) 813, and see Pigott on Foreign Judgments, (ed. 1884), p. 233.)

As to the power of the State to prescribe, arbitrarily, or
28 from policy, limitations and conditions upon the exercise by foreign corporations of corporate rights, I suppose there to be no doubt; whether they be upon the right to do business here, or upon the right to sue in our courts. (People *v.* Fire Association of Phila., 92 N. Y. 311, 324; Bank of Augusta *v.* Earle, 13 Peters, 517, 590; Paul *v.* Virginia, 8 Wall. 168, 181; Pembina Mining Co. *v.* Pennsylvania, 125 U. S. 181, 187; Waters, etc., Oil Co. *v.* Texas 177 *ib.* 28, 45.) Within each State, the people exercise all the powers of government not granted to the General Government, nor prohibited by the Federal Constitution. (10th art. of amendments.) They are prescribed in the constitution of the State, the instrument which furnishes the rules of action and measures the powers of the agents of government designated therein, and they are exercised in the laws, which are promulgated by the law-making body. A corporation could not claim the benefit of those provisions of the Federal Constitution, which confer upon the citizens of each State a general citizenship and secure to them in other States all the privileges and immunities to which the citizens would there be entitled, under the constitution and laws of the State under like circumstances. (U. S. Constitution, sec. 2 art. IV. and amendment XIV.) A corporation, as an artifical person, exists only by force of the law which created it. It has no extraterritorial existence and what rights it may exercise in other jurisdictions are permitted upon the principle of comity. It is not a citizen of the State in the constitutional sense. (Story on the Constitution, sec. 1695; Pembina Mining Co. *v.* Pennsylvania, *supra.*) In Paul *v.* Virginia (*supra*), this question was very fully discussed and it was said that "the corporation being the mere
29 creation of local law can have no legal existence beyond the limits of the sovereignty w-ere created. As said by this court in Bank of Augusta *v.* Earle, 'It must dwell in the place of its creation, and cannot migrate to another sovereignty.' The recognition of its existence, even by other States and the enforcement of its contracts made therein, depend purely upon the comity of those States. * * * Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business in particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

It is strenuously insisted, however, that the action is maintainable, within the meaning and operation of section 1 of article IV of the Constitution of the United States; which reads that "full faith and credit shall be given in each State to the public acts, records and

judicial proceedings of every other State; and the Congress may, by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." A general view of the constitutional provision would make its purpose appear to be to introduce uniformity in the rules of proof; to prescribe the effect of such proof or authentication, and to attribute to foreign judgments "positive and absolute verity, so that they
30 cannot be contradicted or the truth of them denied, any more than in the State where they originated." (Story on the Constitution, secs. 1310, 1312.) The effect, which the appellant would have the court give to these provisions, is to invest the foreign judgment with such ubiquitous character and force, as, upon its being brought within the State, to make it mandatory upon its courts to entertain an action for its enforcement. That this is the true construction of the clause I doubt and my doubt appears to be supported by authority. I refer to what was said about the "full faith and credit" clause of the Federal Constitution in Wisconsin *v.* Pelican Ins. Co. (127 U. S. 265). "Those provisions," it was said, "establish a rule of evidence, rather than of jurisdiction. While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered in evidence. Judgments recovered in one State in the Union, when proved in the courts of another government, whether State or national, within the United States, differ from judgments recovered in a foreign country in no other respect than in not being re-examinable on their merits, nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the case and of the parties. (Hanley *v.* Donoghue 116 U. S. 1, 4.) In the words of Mr. Justice Story, cited and approved by Mr. Justice Bradley, speaking for this court, "The Constitution did not mean to confer any new power upon
31 the States, but simply to regulate the effect of their acknowledged jurisdiction over persons and things within their territory. It did not make the judgments of other States domestic judgments to all intents and purposes, but only gave a general validity, faith and credit to them as evidence.' * * * A judgment recovered in one State, as was said by Mr. Justice Wayne, delivering an earlier judgment of this court, 'does not carry with it, into another State the efficiency of a judgment upon property of persons, to be enforced by execution. To give it the force of a judgment in another State, it must be made a judgment there; and can only be executed in the latter as its laws may permit.' (McElmoyle *v.* Cohen, 13 Pet. 312, 325.)" (See also, Huntington *v.* Attrill, 146 U. S. 657, 684; Lynde *v.* Lynde, 181 U. S. 183.) I do not think that this clause of the Federal Constitution has the virtue attributed to it by the appellant; or that the Code provision in question is in conflict with it.

From a consideration of the authorities, the conclusion must re-

sult that the limitation imposed by section 1780 of the Code, upon the jurisdiction of the courts, in the respect discussed, was valid exercise of the power of the State and that, when the cause of action is the enforcement of a judgment rendered in a foreign jurisdiction it is not one which, in the contemplation of the statute, arose within the State. Nor can it be said to be an unreasonable exercise of power, for the State to restrict litigation in its courts to causes of local origin, where a foreign corporation is sued by a foreign corporation. (Robinson *v.* Oceanic Steam Nav. Co., 112 N. Y. 315, 323.)

32 The conclusion is reached without considering an aspect of the question, which is not, possibly, without importance and that is that it does not appear from the complaint that the cause of action, upon which the plaintiff recovered its judgment was one which it might constitutionally sue upon here. (Huntington *v.* Attrill 146 U. S. 657, 685.)

The judgment should be affirmed with costs.

Parker, Ch. J., O'Brien, Bartlett, Haight, Cullen and Werner, JJ. concur.

Judgment affirmed.

33 [Endorsed:] In the court of appeals. Anglo American Provision Co., appellant, against Davis Provision Company, respondent. (Copy.) Opinion.

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of New York, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The Anglo American Provision Company, the plaintiff, and The Davis Provision Company, the defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States and the decision was against the title, right, privilege, or exemption especially set up or claimed under said clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of said Anglo American Provision Company as by its complaint appears, we being

willing that error, if any hath been, should be duly corrected
35 and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 13th day of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the 7th day of April, in the year of our Lord, one thousand nine hundred and two.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk Circuit Court of the United States,
South. Dist. of New York.

Allowed by—
ALTON B. PARKER,
Chief Judge Court of Appeals, State of New York.

36 [Endorsed:] U. S. Supreme Court. Anglo America Provision Company, plaintiff, appellant, against Davis Provision Company, defendant, respondent. (Original). Writ of error. Weiser & Bridges, att'ys for plaintiff-appellant, 35 William street, New York city, (borough of Manhattan) Copy rec'd this 19th day of March, 1902. Smith Conway & Weed att'ys for respondent.

37 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

To the justices of the Supreme Court of the United States, Greeting:

The return of the judges of the court of appeals of the State of New York in pursuance to the writ of error granted in the action entitled "Anglo-American Provision Company, appellant against Davis Provision Company, respondent, is contained in the papers and proceedings hereto attached.

Seal State of New York Court of Appeals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this 8th day of April A. D. 1902.

W. H. SHANKLAND,
Clerk of the Court of Appeals.

38 By the Honorable Alton B. Parker, chief judge of the court of appeals, in the State of New York.

To Davis Provision Company, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, to be holden at the city of Washington, in the District of Columbia on the 13th day of October 1902, pursuant to a writ of error filed in the clerk's office of the court of appeals in New York wherein The Anglo American Provision Company is appellant and you are respondent to show cause if any there be why the decree in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of Albany, State of New York this 14th day of March, in the year of our Lord, one thousand nine hundred and two, and of the Independence of these United States the one hundred and twenty-sixth.

[Seal State of New York Court of Appeals.]

ALTON B. PARKER,
Chief Judge of the Court of Appeals, New York State.

39 [Endorsed:] Court of appeals, New York State. Anglo American Provision Co., appellant against Davis Provision Company, respondent. (Original) Citation. Copy received this 19th day of March, 1902. Smith, Conway & Weed, attorneys for respondent.

40 In the Court of Appeals, State of New York.

ANGLO AMERICAN PROVISION COMPANY, Plaintiff-Appellant,
against
DAVIS PROVISION COMPANY, Defendant-Respondent.

Now comes the plaintiff-appellant, Anglo American Provision Company, into court by its attorneys, Weiser & Bridges, and says that in the record and proceedings herein there is manifest error in this to wit:

First. The court below erred in finding that the State has power arbitrarily to prescribe limitations and conditions upon the exercise by foreign corporations of corporate rights in so far as it effects the right of a foreign corporation to sue in the State courts upon a judgment lawfully obtained in a foreign State on a personal appearance on behalf of the defendant.

Second. The court below erred in not finding that under article 4 section I. of the Constitution of the United States, a foreign corporation must be protected in its right to sue on a foreign judgment obtained on defendant's appearance, where such judgment was not recovered for penalty, and that in case such judgment was recovered as a penalty that this must be pleaded by way of defense.

Third. The court below erred in not holding that section 1780 of the New York Code of Civil Procedure was unconstitutional and void in that it violated the provisions of article 4, section I of
41 the United States Constitution in not allowing a foreign corporation to bring an action in the State of New York on a foreign judgment obtained on voluntary appearance of defendant where the subject matter of such judgment did not arise in penalty.

Fourth. The court below erred in not finding that the plaintiff was entitled to judgment in the State of New York against the defendant for the sum of five thousand forty-nine and 98/100 dollars with interest thereon from the 6th day of January 1899, together with costs of the action.

Wherefore: for diverse other errors in said record appearing the plaintiff-appellant prays that the final decree appealed from be reversed and annulled and that a decree be entered in favor of plaintiff-appellant and against defendant-respondent as prayed for by the bill of complaint herein with costs.

WEISER & BRIDGES,
Att'ys for Plaintiff-Appellant.

42 [Endorsed:] In the court of appeals, State of New York. Anglo American Provision Company, plaintiff-appellant, against Davis Provision Company, defendant-respondent. (Original) Assignment of error. Weiser & Bridges, att'ys for plaintiff-appellant, 35 William street, New York city. (Borough of Manhattan)

43 Court of Appeals, State of New York.

ANGLO AMERICAN PROVISION COMPANY, Plaintiff-Appellant, *against* DAVIS PROVISION COMPANY, Defendant-Respondent. } Bond for Damages and Costs.

Know all men by these presents, that The City Trust, Safe Deposit & Surety Company of Philadelphia, a corporation duly organized under the laws of the State of Pennsylvania, and having its principal office in the city of Philadelphia, but lawfully transacting business in the State of New York, and having an office at No. 160 Broadway, New York city, State of New York, is held and firmly bound unto the above-named Davis Provision Company, in the sum of two hundred and fifty ($250.00) dollars, to be paid to the said defendant-respondent, Davis Provision Company, for the payment of which well and truly to be made, it binds itself, its successors and assigns, firmly by these presents.

Sealed with our seals, and dated the 24th day of February, 1902.

Whereas, the above-named plaintiff-appellant has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judges of the court of appeals of the State of New York;

Now therefore, the condition of this obligation is such, that if the above-named Anglo American Provision Company, plaintiff-appellant, shall prosecute its said appeal to effect and answer all damages and costs, if it fail to make its said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THE CITY TRUST, SAFE DEPOSIT AND SURETY COMPANY OF PHILADELPHIA,
160 *Broadway, N. Y.*

JNO. A. SULLIVAN, *Vice-President.*
P. H. MOONEY, *Ass't Secretary.* [L. S.]

Sealed and delivered in the presence of—
—— ——.

44 S. D. 59.—1902. New York.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 24 day of February A. D., 1902, before me personally appeared John A. Sullivan, to me known, who being by me duly sworn, did depose and say: That he resided in the city of New York; that he is the vice-president of the City Trust, Safe Deposit and Surety Company of Philadelphia, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by section 3, chapter 720, of the New York Session Laws of 1893.

And the said John A. Sullivan further said, that he was acquainted with Patrick H. Mooney and knew him to be the assistant secretary of said corporation; that the signature of said Patrick H. Mooney subscribed to said instrument is in the genuine handwriting of said Patrick H. Mooney, and was thereto subscribed by like order of said board of directors and in the presence of him, the said John A. Sullivan, vice-president.

[L. S.]

WM. K. JARDINE,
Notary Public, Kings County, # 58.

Certificate filed in New York county.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the eleventh day of May, A. D. 1897, the following resolutions were adopted:

On motion of Dr. Baker, duly seconded, Mr. Stephen Farrelly, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power to execute in the name of the company, and to affix

the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan, of the city of New York, was duly elected a vice-president of the company, resident in the city of New York, in the State of New York, with full power in the absence of Mr. Stephen Farrelly, resident vice-president, to execute in the name of the company, and to affix the corporate seal and duly acknowledge the same, any and all bonds or contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company, in the State of New York.

On motion of Dr. Baker, duly seconded by Mr. Sailer, Mr. John A. Sullivan was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, its resident vice-presidents, in the conduct of the business of the company in the State of New York.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, on the ninth day of January, 1899, the following resolution was adopted:

On motion of Mr. Potts, duly seconded by Dr. Baker, Mr. Patrick H. Mooney was elected as assistant secretary of the company, in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds or contracts of suretyship which have been signed by Mr. Stephen Farrelly, or Mr. John McAnerney, or Mr. John A. Sullivan, its resident vice-presidents, in the conduct of the business of the company in the State of New York.

At a regular meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia, for the purposes of organization, on the fifteenth day of May, A. D., 1901, the following resolution was adopted:

On motion of General Wagner, duly seconded, the following gentlemen were unanimously re-elected as vice-presidents and assistant secretaries in the various places named: Resident vice-presidents at New York, Stephen Farrelly, John A. Sullivan; resident assistant secretaries at New York, John A. Sullivan, Patrick H. Mooney.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia on the eighth day of July, A. D., 1901, the following resolutions were adopted:

On motion of Mr. Banes, duly seconded by Dr. Peirce, Mr. William K. Jardine was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously

signed by Mr. John A. Sullivan or Mr. Stephen Farrelly, its resident vice-presidents, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Pfahler, duly seconded by Mr. McOwen, Mr. Edmund C. Lockwood, of the city of New York, was duly elected a vice-president of the company, resident in the said city of New York, in the State of New York, with full power to execute in the name of the company, and to affix the corporate seal thereto and duly acknowledge the same, any and all bonds and contracts of suretyship that may be required and necessary to be executed in carrying on the business of the company in the said State of New York.

At a regular monthly meeting of the board of directors of the City Trust, Safe Deposit and Surety Company of Philadelphia, held in the city of Philadelphia on the tenth day of February, A. D., 1902, the following resolutions were adopted:

On motion of Dr. Peirce, duly seconded by Mr. McOwen, Mr. John A. Sullivan was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Sailer, duly seconded by General Wagner, Mr. William K. Jardine was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

On motion of Mr. Banes, duly seconded by Mr. Pfahler, Mr. Patrick H. Mooney was elected as assistant secretary of the company, resident in the city of New York, in the State of New York, and empowered to attest the corporate seal of the company to any and all bonds and contracts of suretyship which shall have been previously signed by Mr. Edmund C. Lockwood, its resident vice-president, in the conduct of the business of the company in the said State of New York.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Patrick H. Mooney, assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, have compared the foregoing resolutions with the originals thereof, as recorded in the minute book of the said company, and do certify that the same are a correct and true transcript thereof.

Given under my hand and the seal of the company, this 24 day of February, A. D. 1902.

[L. S.]

P. H. MOONEY,
Assistant Secretary.

Statement of the City Trust, Safety Deposit and Surety Company of Philadelphia.

Incorporated 1886.

On the thirty-first day of December, 1901, the assets and liabilities of the company were:

Assets.		*Liabilities.*	
Cash on hand	$117,474 05	Capital stock	$500,000 00
Cash in banks	326,766 79	Surplus fund	150,000 00
Call loans upon collaterals	1,334,046 59	Re-insurance reserve	134,310 05
Time loans upon collaterals	94,460 00	Undivided profits	83,802 43
Loans upon bonds and mortgages	61,700 00	Deposits	2,295,312 08
Investment securities owned, stocks, bonds, &c.	437,707 00	Miscellaneous liabilities	12,416 00
Real estate, furniture, and fixtures	540,951 60		
Miscellaneous assets	262,734 53		
Total	$3,175,840 56	Total	$3,175,840 56

STATE, CITY, AND COUNTY OF NEW YORK, ss:

Patrick H. Mooney, being duly sworn, says that he is assistant secretary of the City Trust, Safe Deposit and Surety Company of Philadelphia, and that the above is a correct statement of the financial condition of the company, on December 31st, 1901.

P. H. MOONEY.

Sworn to and subscribed before me, this 24 day of February, A. D., 1902.

[L. S.]

WM. K. JARDINE,
Notary Public, Kings County, #58.

Certificate filed in New York county.

45 Endorsed.

Approved as to form and the sufficiency of the surety.

ALTON B. PARKER,
Chief Judge C. of Appeals, State of N. Y.

The signing and execution of the within bond by the plaintiff is hereby waived.

Dated New York, Feb. 27, 1902.

SMITH, CONWAY & WEED,
Att'ys for Def't.

46 STATE OF NEW YORK:

Court of Appeals, Clerk's Office.

I, W. H. Shankland, clerk of the court of appeals of the said State of New York, do hereby certify that the annexed papers constitute a true and correct copy of the return on appeal to the court of appeals in the action entitled "Anglo-American Provision Company, appellant against Davis Procision Company, respondent," and the whole thereof upon which the said court of appeals acted in rendering judgment therein, together with copies of the remittitur and opinion of said court, and of the original writ of error, assignment of error, copy of bond, acknowledgments and the endorsements thereon and original citation, which constitute the return herein to the Supreme Court of the United States, and that such papers as are copies, are true and correct copies of the originals on file in this office.

Seal State of New York Court of Appeals.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this 8th day of April A. D. 1902.

W. H. SHANKLAND,
Clerk of the Court of Appeals.

Endorsed on cover: File No. 18575. New York court of appeals. Term No. 64. The Anglo-American Provision Company, plaintiff in error, vs. Davis Provision Company. Filed June 5th, 1902.

FILE COPY.

Supreme Court of the United States,

OCTOBER TERM, 1903.

No. 64.

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JAMES H. McKENNEY,
Clerk

THE ANGLO AMERICAN PROVISION COMPANY,
Plaintiff-in-Error,

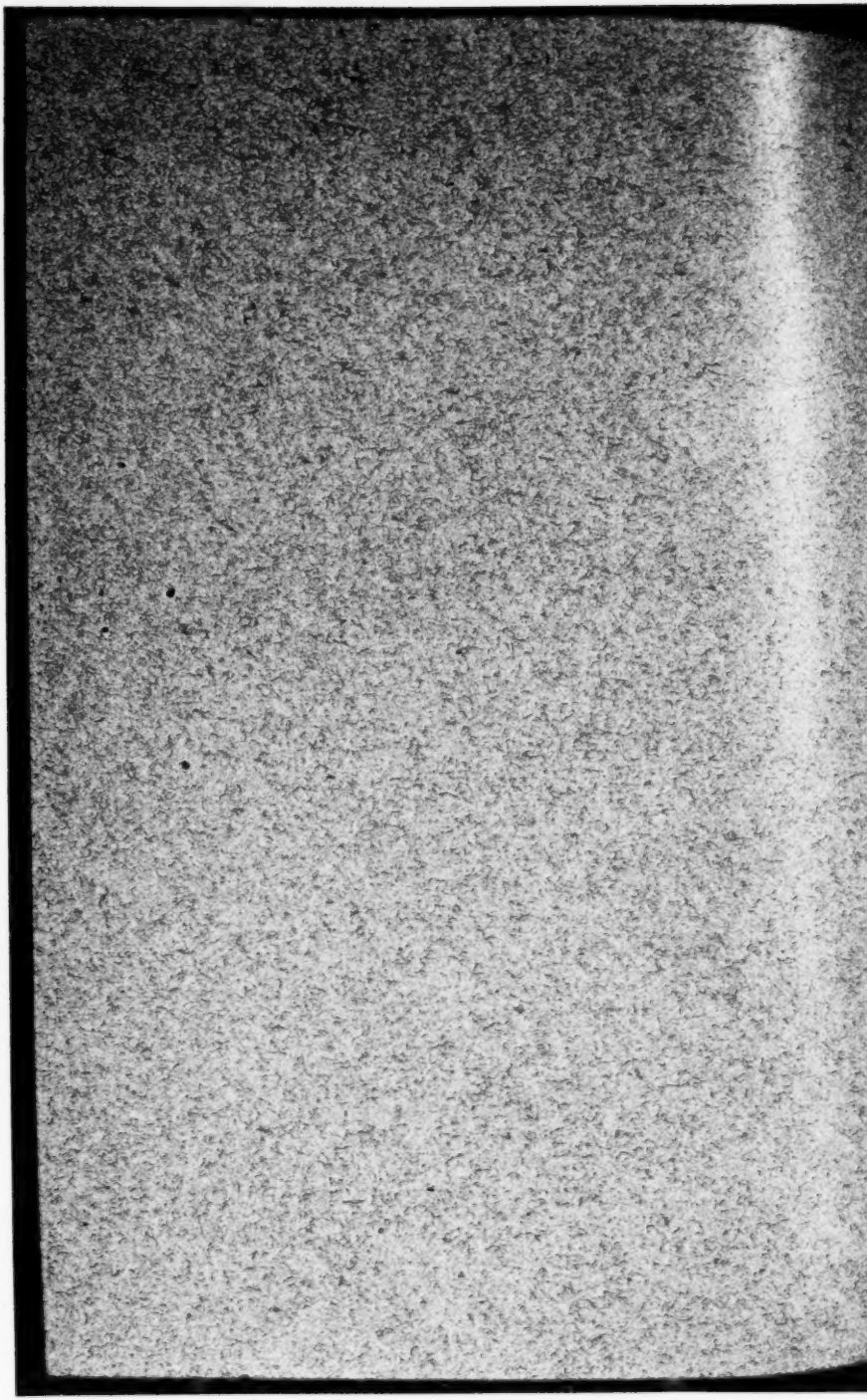
vs.

DAVIS PROVISION COMPANY,
Defendant-in-Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF AND ARGUMENT ON THE PART OF THE PLAINTIFF-IN-ERROR.

HENRY WILSON BRIDGES,
Counsel for Complainant.



Supreme Court of the United States,

OCTOBER TERM, 1903.

THE ANGLO AMERICAN PROVISION COMPANY,
Plaintiff-in-Error,

vs.

DAVIS PROVISION COMPANY,
Defendant-in-Error.

No. 64.

In Error to the Court of Appeals of the State of New York.

BRIEF AND ARGUMENT ON THE PART OF THE PLAINTIFF-IN-ERROR.

Statement of Cause.

This is an action originally brought in the Supreme Court in the State of New York (Transcript, p. 2). The complaint for a cause of action, seeks to establish a judgment obtained in the Circuit Court of Cook County, State of Illinois, in January, 1899, in a suit between this plaintiff and defendant, both corporations organized under the laws of that State (Transcript, p. 2).

Defendant demurred to the complaint on several grounds (Transcript, pp. 3-4), but they are all covered by the fifth paragraph, which states, "that the action is not brought for any of the causes of action specified in Section 1,780 of the Code of Civil Procedure."

This section provides as follows:

* * * * "An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only.

1. .....

2. .....

3. Where the cause of action arose within the State."

The demurrer was sustained in the first instance at Special Term (Transcript, p. 5). This decision was affirmed by the Appellate Division of the Supreme Court in an opinion handed down by Mr. Justice O'Brien (Transcript, pp. 6–7), and this judgment was in turn affirmed by the Court of Appeals in an opinion handed down by Mr. Justice Gray (Transcript, pp. 11–15). The case comes before this Court on writ of error (Transcript, pp. 15–16) addressed to the Court of Appeals of the State of New York and allowed by the Chief Judge thereof.

Specification of Errors.

Errors are duly assigned in the record (Transcript, pp. 17-18). They may be summed up in one proposition, viz.:

The Court erred in holding that the State of New York has power to pass a law which will prohibit a foreign corporation from bringing in

that State an action to enforce a judgment lawfully obtained in a foreign State on a personal appearance on behalf of defendant, such right being guaranteed to the foreign corporation by Art. 4, Sec. 1, of the U. S. Constitution, which provides that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State."

Argument.

1st. The results of this decision will if followed be most pernicious and violative of the plain intent of the framers of the Constitution.

2nd. The Courts below base their disregard of Art. 4, Sec. 1 of the Constitution on authorities which have no bearing whatever on this case.

3rd. Both Courts have completely ignored the case cited to them, and urged by counsel as determining this case.

4th. Both Courts are at variance with the decision of the U. S. Circuit Court in this very litigation.

5th. The decision also violates the commercial clause of the Constitution.

I.

The results of this decision will if followed be most pernicious and violative of the plain intent of the framers of the Constitution.

As stated above, this action is one brought to establish in the State of New York a judgment ob-

tained in the State of Illinois by a corporation organized under the laws of the latter.

While what follows is not contained in the transcript in this case, it is all a matter of which the Court can take judicial notice, being comprised entirely in decrees of Courts of Record.

The defendant in this case is totally insolvent, and has but one asset, namely, a judgment against the plaintiff herein obtained in the Courts of New York State, on the ground that the contract sued on was made within that state. This judgment has been affirmed by the Court of Appeals, and execution is now in the hands of the sheriff.

Davis Provision Co. v. Fowler Bros. Lim. 163 N. Y., 580.

This execution has been enjoined by the Circuit Court of the United States.

The Court held in the above case that Fowler Bros. Lim., and the Anglo-Am. Pr. Co., were indentical in fact and interest.

It is apparent that our object in bringing this action in the State Courts was that after judgment was entered hereon, we might be able to obtain a decree of set-off of one judgment against the other.

The question before the Court is one of the gravest import, for in its ultimate analysis it means, if the decision of the highest Court of the State of New York is correct, that *every corporation in this country organized outside of New York State can by moving its assets into that state protect itself from the just claims of all foreign corporate creditors.* In order to justify such a conclusion it would seem an essential premise that a corporation is never entitled to the protection of our Constitution. This, of course, is not the case.

While the principle involved is a most important one, the point at issue can be very simply and

concisely stated. It is this: *Is a corporation such a party as is entitled to claim the protection of Article 4, Sec. 1 of the United States Constitution?* The Courts below have held that it is not, and it is in this respect that we claim they have erred.

In taking up this question we will discuss it under three different headings:

A. What was the intention of the founders of the Constitution in establishing this section.

B. What principles govern in the application to corporations of certain sections of the Constitution and their exclusion under others.

C. Do the reasons for which it is held corporations are entitled to the protection of certain sections of the Constitution apply equally to this section.

A.

What was the intention of the founders of the Constitution in establishing this section.

There can be no doubt that the purpose of the founders of the Constitution was to do exactly what the terms of the Constitution would imply, namely, to give "*full faith and credit in each state to the public acts, records and judicial proceedings of every other state.*"

By the Act of the 26th May, 1790, Chap. XI, Congress in accordance with the terms of the Constitution provided for the mode of authenticating the records and judicial proceedings of the State Courts, and then further declared that "the re-

cords and judicial proceedings authenticated as aforesaid shall have such faith and credit given to them in every Court within the United States *as they have by law or usage in the Courts of the state from which the said records are or shall be taken.*"

From another contemporary source of interpretation we find that the purpose of this section of the Constitution was to prevent the very thing which is made possible by this decision of the New York Court. The language of the Federalist in regard to this section is as follows: "The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous states, where effects liable to justice may be suddenly and secretly translated, at any stage of the process, within a foreign jurisdiction" (Federalist, Vol. XLII).

It would thus seem that it was the express intention of the Constitution to give the most ubiquitous effect to the public acts, records and judicial proceedings of the various states.

It is argued by the Court below (transcript, p. 14) that "A general view of the constitutional provision would make its purpose appear to be to introduce uniformity in the rules of proof;" and that for this reason the Court is not bound to give any faith or credit to this Illinois judgment. It would seem that this very line of argument was urged upon the Court in one of the earliest cases before it, for the opinion of Mr. Justice Story in the case of Mills v. Duryee contains the following passage:

> "It is argued that this act provides only for the admission of such records *as evidence*, but does not declare *the effect* of such evidence when admitted. This argument cannot be supported. The act declares that

the record duly authenticated shall have *such faith and credit as it has in the state Court from whence it is taken.* If in such Court it has the faith and credit of evidence of the highest nature, viz. *record evidence*, it must have the same faith and credit in every other Court. Congress have, therefore, declared the *effect* of the record by declaring what faith and credit shall be given to it."

Mills v. Duryee, 7 Cranch., 484.

There is only one exception apparently to this broad general rule, and that is that the states are not compelled to give force and effect within their jurisdiction to judgments obtained in another state on the ground of penalty. The reason for this exception is obvious. As stated by Chief Justice Marshall: "The Courts of no country execute the penal laws of another" (The Antelope, 10 Wheat., 66, 123). *Every exception, cited to the general rule, contained in the opinions of the Courts below and on briefs of counsel has been of this nature, namely, an attempt to enforce judgments obtained under penal statutes* under this provision of the Constitution; and it having always been held that penal statutes are outside the reason for the law, naturally they have not been enforced. Our action is not for the enforcement of a judgment recovered on a penalty, and it has never been claimed that it was.

B.

What principles govern in the application to corporations of certain sections of the constitution and their exclusion under others?

There can be no question "but that corporations in many respects differ in their nature essentially from private individuals. They have thus been held not to be entitled to the benefit of and protection under certain clauses of the Constitution, as, for example, Art. IV, Sec. 2, which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

On the other hand, they have been expressly held to be entitled to invoke the protection of the clause against the inviolability of contract, and have also been held to be included in the term "persons" under the Fourteenth Amendment.

> Pembina Mining Co. v. Pennsylvania, 125 U. S., 189.

What is the basis of distinction? It is indeed a most rational one, and has been distinctly set forth by this Court. In the construction of statutes, "*corporations are to be deemed and considered as persons, when the circumstances in which they are placed are identical with those of natural persons, expressly included in such statutes.*"

> Beaston v. Farmers' Bank, 12 Peters, 134.

Under Art. IV, Sec. 2, corporations could not be considered as placed in identical circumstances

with individuals, for, as was said by Chief Justice Taney in Bank of Augusta v. Earle:

> "If it were held to embrace contracts, and that the members of a corporation were to be regarded as individuals carrying on business in their corporate name, and therefore entitled to the privileges of citizens in matters of contract, it is very clear that they must at the same time take upon themselves the liabilities of citizens, and be bound by their contracts in like manner. The result of this would be to make a corporation a mere partnership in business, in which each stockholder would be liable to the whole extent of his property for the debts of the corporation; and he might be sued for them, in any state in which he might happen to be found."

Bank of Augusta v. Earle, 13 Peters, 586.

C.

Do the reasons for which it is held corporations are entitled to the protection of certain sections of the constitution apply equally to this section?

Are the circumstances in which this plaintiff corporation is placed identical with those of a natural person? If they are not, certainly the distinction has never been pointed out by defendant in error or by the Courts below.

In what respect does a corporation seeking to enforce a judgment of a sister state differ from a private individual?

As far as the language of the Constitution is concerned it applies as much to corporations as to natural persons. There is nothing in the

meaning or language of this section which would differentiate it from the commercial clause of the Constitution in so far as its applicability to corporations is concerned.

In discussing the question as to whether the latter section of the Constitution applied to corporations, the Court has said:

> "We proceed to the second objection urged to the validity of the Virginia statute, which is founded upon the commercial clause of the Constitution. It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals * * * *The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general, and includes alike commerce by individuals, partnerships, associations and corporations.*"

Paul v. Virginia, 8 Wallace, 182.

II.

The courts below base their disregard of Art. 4, Sec. 1 of the Constitution on authorities which have absolutely no bearing on the case.

This case has passed through three different Courts, two of which have written opinions thereon. It is noticeable, however, that in reviewing the decision of the Appellate Division, the Court of Appeals has completely ignored the only case which the lower Court pronounced "analogous" to this case, namely, Chemung Canal Bank v. Lowery, 93 U. S., 72, and has selected different

authorities on which to base its disregard of Art. 4, Sec. 1 of the Constitution.

The Appellate Division of the Supreme Court in its opinion uses the following language (Transcript, p. 7):

> "Nor do we think that there is force in the "further contention that Section 1780 of the "Code is unconstitutional as violative of the "provision of the United States Constitution "that 'full faith and credit shall be given in "'each state to the public acts, records and "'judicial proceedings of every other state.' "The present case is analogous to that of "Chemung Canal Bank v. Lowery (93 U. S., "72), where a state Statute of Limitations was "attacked as repugnant to the same clause of "the Constitution of the United States as is "here brought before us, and it was held that "the law in question did not produce any un-"constitutional discrimination."

ON REFERENCE TO THE CASE CITED IT WILL BE SEEN THAT THIS CLAUSE OF THE CONSTITUTION WAS NEVER MENTIONED, NOR DOES THE CASE BEAR THE SLIGHTEST ANALOGY TO THE CASE BEFORE THEM.

In the Chemung case, the decision was to the effect that a state statute, providing that when a defendant is out of the state the Statute of Limitation shall not run against a resident plaintiff, but shall run against a non-resident plaintiff, is not repugnant to the second section of the fourth article of the Constitution of the United States, which declares that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The reason for the decision is obvious. It is the duty of the debtor to seek the creditor and pay at the place of his (the creditor's) residence. But, in

the language of the Court, "if the statute does not run, as between non-resident creditors and their debtors, it might often happen that a right of action would be extinguished, perhaps for years in the state where the parties reside, and yet, if the defendant should be found in Wisconsin—it may be only in a railroad train—a suit could be sprung on him after the claim had been forgotten."

Where is the analogy?

Our judgment has not been outlawed in the state where obtained, and we do not claim the protection of the clause of the Constitution cited. No one disputes that our judgment is "valid" (Transcript, p. 12). *It was obtained on appearance, and is enforceable in the State where obtained*, and our contention is that this has always been held to be all that is necessary to entitle us to the protection of the clause we do invoke. Indeed, this Court has said:

> "*We can perceive no rational interpretation of the act of Congress, unless it declares a judgment conclusive when a Court of the particular State where it was rendered would pronounce the same decision.*"
>
> *Mills v. Duryee, 7 Cranch., 485.*
> *Christmass v. Russell, 5 Wall., 290.*
> *Mutual Life Ins. Co. v. Harris, 97 U. S., 331.*

On the other hand, the Court of Appeals puts itself squarely on record as follows:

> "As to the power of the State to prescribe arbitrarily or from policy limitations and conditions upon the exercise by foreign corporations of corporate rights, I suppose there to be no doubt, whether they be upon the right to do

business here *or upon the right to sue in our Courts*" (Transcript, p. 13).

Each one of the cases cited by the Court does sustain the first part of their proposition, namely, that the State has a right to prescribe limitations and conditions upon the exercise by foreign corporations of the privilege of doing business within the State: but the cases have absolutely no bearing whatever upon the second part of the proposition, namely, *the right to sue in the Courts*, which is all that relates to the case before them.

We admit that the first part of the proposition of the Court of Appeals is in a limited sense correct, but that is not our case. We have not come into the State for any such purpose. WE ARE NOT SEEKING TO DO BUSINESS HERE BUT SIMPLY TO ENFORCE A RIGHT GUARANTEED TO US BY THE CONSTITUTION. WE ARE BEFORE THE COURTS OF NEW YORK STATE NOT BECAUSE WE WISH TO BE, BUT BECAUSE WE HAVE A JUDGMENT ABSOLUTELY USELESS IN ANY OTHER JURISDICTION. Indeed, as an abstract proposition even the first part of the Court of Appeals' statement goes too far, for the State cannot prescribe arbitrarily limitations and conditions upon the exercise by a foreign corporation of corporate rights, provided the business carried on by that foregin corporation relates to interstate commerce. The Court has always been most careful to restrict its decrees in these cases, relating to the constitutionality of State Statutes strictly to the facts before it. Indeed, Chief Justice Taney had said in the case so much relied on and quoted by the Court of Appeals, namely, Bank of Augusta vs. Earle, 13 Peters, 597.

> "Nor do we mean to say whether there may not be some rights under the Constitution of the United States, which a corporation might claim under peculiar circumstances, in

a State other than that in which it was chartered."

We submit that this is one of those rights.

While the Court of Appeals does not claim that the State statutes, sustained in the decisions on which it relies, were attacked on the ground of being violative of Sec. 1, Art. 4 of the Constitution, it seems to think, however, that because these cases did pronounce valid certain State statutes restricting the rights of foreign corporations on the ground that the said statutes did not violate Art 4, Sec. 2 of the Constitution, that therefore they are authoritative in this case. How can this be so? We do not claim that the New York State statute violates Sec. 2, Art. 4, of the Constitution, and we have disavowed claiming, both by brief and orally, that a corporation is a *citizen* within the meaning of Art. 4, Sec. 2. How then can these cases be held authoritative against the proposition that *Sec. 1780 of the Code of Civil Procedure of New York State*, as interpreted, violates Sec. 1, Art. IV of the Federal Constitution?

III.

Both Courts below have completely ignored the case cited to them, and urged by counsel as determining this case.

It has been held by this Court that a statute of the State of Mississippi, which provided that no action should be maintained in that State on a foreign judgment against a resident·

"In any case where the cause of action

> would have been barred by any act of limitation of that State (Miss)., if such suit had been brought therein,"

was unconstitutional.

Christmas v. Russell, 5 Wallace, 290.

In other words, the State of Mississippi by passing a ridiculous statute of limitations was not to be enabled to invalidate any foreign judgment that it should see fit so to do.

It is just this that the decision of the New York Court has done. It says, you have a judgment perfectly valid in Illinois, to be sure, but it does not avail here, because you are a foreign corporation and our statute does not allow you to come in. We admit that we have been unable to find a case where both plaintiff and defendant were foreign corporations; but what possible difference can a matter of parties make when the rule of law is absolutely unregardful of the parties, except as to the matter of service, and refers, in express terms and language, simply to the judgment itself?

IV.

Both Courts are at variance with the decree of the U. S. Circuit Court in this very litigation.

As stated above, execution, in the hands of the Sheriff of New York County in the case of *Davis Pro. Co. v. Fowler Bros. Lim.*, has been stayed by the U. S. Circuit Court. After two vain attempts to obtain a stay pending appeal, plaintiff instituted an action in the United States Circuit Court in Equity, alleging the facts of the Illinois

and New York judgments, the attempt to establish the Illinois judgment, defendant's demurrer to our complaint in this action, the decision of the Appellate Division, and asked as relief an injunction against the Sheriff of New York County, and the privilege to set off directly the Illionis judgment against the New York judgment, on the ground that the New York statute, as interpreted by the Appellate Division, had deprived us of a right secured to us by the Constitution, and that we were, therefore, entitled to a remedy in the Circuit Court of the United States under the *Civil Rights Statute.*

To this bill also defendants demurred, and their demurrer was overruled.

Anglo Am. Prov. Co. v. Davis Prov. Co.,
105 Fed. Rep., 536.

From this decision defendant did not appeal, but answered.

It is a judgment on the merits in that case which comes before the Court to be heard at the same time herewith.

IT IS APPARENT, THEREFORE, THAT IN THIS VERY ACTION DIAMETRICALLY OPPOSITE CONCLUSIONS HAVE BEEN REACHED IN THE STATE COURTS AND IN THE UNITED STATES COURT. WE SUBMIT THAT THE UNITED STATES COURT IS RIGHT, AND THE STATE COURTS ARE WRONG ON ALL VALID PRECEDENT.

Under ordinary circumstances it is perfectly reasonable that a State Court should take cognizance of actions between non-residents and foreign corporations only when the cause arises in the State.

The New York Courts are maintained by the residents and citizens of that State, and there is no

reason why their time should be taken up in deciding questions which arise between two California corporations over transactions occurring in the latter State. How different, however, is it when the California corporations have had recourse to their own Courts, have fought out the matter at issue betwen themselves and reduced the same to judgment.

In order to prevent the defeated corporation from moving its assets into another State, and enjoying absolute immunity as this iniquitous decision would allow them to do, the United States Constitution provides that such a judgment shall be enforced.

It would indeed be difficult for the defendant in error to answer the statement made by Judge Wheeler in the case of the Anglo American Provision Co. v. The Davis Provision Company (*supra*), when he says "full faith and credit to the Illinois judgment is not only not given to the plaintiff in New York, but the plaintiff is deprived of the right, by being deprived of the right to sue, to have any faith or credit whatever given there to that judgment."

V.

This decision also violates the commercial clause of the Constitution.

This objection is not taken in the assignment of errors but "the Court, at its option may notice a plain error not assigned or specified" (Rule 21).

It has been held that a "statute cannot be construed to impose upon a foreign corporation limitations of its right to make contracts

in the State for carrying on commerce between the States, for that would make the act an invasion of the exclusive right of Congress to regulate commerce among the several States."

Cooper Mfg. Co. v. Ferguson, 113 U. S., 734.

Does not the construction placed upon Section 1780 of the Code "impose upon a foreign corporation limitations of its right to make contracts for carrying on commerce between the States?" How can it be held that while a State statute cannot prevent a foreign corporation from contracting to carry the goods of another foreign corporation to a given place within the State, that it could forbid the first corporation from enforcing its rights against the second by action and levy on the goods themselves?

We submit that there was error in the judgment and pray that it be reversed and the cause remanded.

Respectfully submitted,

HENRY WILSON BRIDGES,
Counsel for Complainant.

[1973]

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Supreme Court of the United States,

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
NOV 7 1903
JAMES H. McKENNEY,
Clerk.

No. 64.

THE ANGLO-AMERICAN PROVISION COMPANY,
Plaintiff in Error,

against

THE DAVIS PROVISION COMPANY,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

FRANK E. SMITH,
THOMAS F. CONWAY,
Counsel for Defendant.

(1918 Law) MARTIN B. BROWN CO., Printers, 49 to 57 Park Place, New York.

Supreme Court of the United States.

THE ANGLO-AMERICAN PROVISION COMPANY,
Plaintiff-in-Error,

against

THE DAVIS PROVISION COMPANY,
Defendant-in-Error.

October Term, 1903.
No. 64.

Brief for Defendant-in-Error.

Writ of error to review a judgment of the Court of Appeals of the State of New York.

The action was brought by the plaintiff-in-error against the defendant-in-error in the Supreme Court of New York upon a judgment obtained by it in Illinois against defendant for $5,049.98.

Both parties are corporations organized under the laws of Illinois, and, as regards the State of New York, both foreign corporations.

The defendant demurred to the jurisdiction of the state court. The demurrer was sustained and final judgment rendered in favor of defendant, which was affirmed by the Appellate Division and again by the Court of Appeals.

The ground upon which judgment has been rendered for defendant by the state courts is that the statute law of New York forbids an action in its courts by one foreign corporation against another foreign corporation upon a cause of action arising outside the State, and because the alleged cause of action on the Illinois judgment arose in Illinois and not in New York.

The statutes in question are now embodied in the Code of Civil Procedure, and are as follows:

Sec. 1779. **When Foreign Corporation May Sue.** An action may be maintained by a foreign corporation in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the State, country or government by or under which the corporation is created; or of an act done at such a meeting which is not in conflict with the same laws or the laws of the State.

Sec. 1780. **When Foreign Corporation May be Sued.** An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation or by a non-resident in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract made within the state, or relating to property situated within the state, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State or a chattel which is replevied within the State.

3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the State.

Plaintiff denied the validity of these statutes on the ground that so far as they prevented it from maintaining an action on the Illinois judgment they were repugnant to article 4, section 1 of the Constitution, in that full faith and credit was not given to the Illinois judgment.

The Federal question is whether or not the sections of the New York Code above quoted, or either of them, is repugnant to the "full faith and credit" clause of the Constitution.

Or, to put the question in a more practical form: Does that clause of the Constitution compel a State to confer power upon its courts to hear and determine controversies arising outside its limits and between corporations not subject to its laws?

FIRST.

The clause of the Constitution in question relates only to the effect of the judgment as evidence.

The claim of the plaintiff is that section 1780 of the Code, so far as it applies to an action in one State upon a judgment rendered in another, conflicts with article IV., section 1 of the Constitution, which is:

> "Full faith and credit shall be given in each state "to the public acts, records and judicial proceed- "ings of every other state. And the congress may, "by general laws, prescribe the manner in which "such acts, records and proceedings shall be "proved and the effect thereof."

Congress has enacted that such records and judicial proceedings, when authenticated in a particular manner, shall have "such faith and credit given to them in every "court within the United States as they have by law "and usage in the courts of the state from which they "are taken" (R. S., sec. 905).

The settled construction given to these fundamental laws is that they establish a rule of evidence and not of jurisdiction.

Wisconsin *vs.* Pelican Ins. Co., 127 U. S., 265, 291.

Huntington *vs.* Attrill, 146 U. S., 657, 685.

Wisconsin vs. *Pelican Ins. Co.* was an action brought in this Court by the State to enforce a judgment which it had recovered in its own court against the insurance company for penalties for doing business in the State without a license. The defense rested on the rule that "the courts of no country execute the "penal laws of another."

GRAY, *J.*, says (p. 291):

"The application of the rule to the courts of the "several States and of the United States is not af- "fected by the provisions of the Constitution and "of the act of Congress by which the judgments of "the courts of any State are to have such faith "and credit given to them in every court within "the United States as they have by law or usage "in the State in which they are rendered. (Constitution, Art. 4, Sec. 1; Act of May 26, 1790; C. 11; Rev. Stat., § 905).

"Those provisions establish a rule of evidence "rather than of jurisdiction. While they make the "record of a judgment rendered after due notice in "one State, conclusive evidence in the courts of an- "other State, or of the United States, of the mat- "ter adjudged, they do not affect the jurisdiction

" either of the court in which the judgment is " rendered or of the court in which it is offered in " evidence. Judgments recovered in one State of " the Union, when proved in the courts of another " government, whether State or National, within " the United States, differ from judgments re- " covered in a foreign country in no other respect " than in not being re-examinable on their merits " nor impeachable for fraud in obtaining them, if " rendered by a court having jurisdiction of the " cause and of the parties (*Hanley* vs. *Donoghue*, " 116 U. S., 1, 4).

" In the words of Mr. Justice Story, cited and " approved by Mr. Justice Bradley, speaking for " this court, 'The Constitution did not mean to " ' confer any new power upon the States, but " ' simply to regulate the effect of their acknowl- " ' edged jurisdiction over persons and things " ' within their territory. It did not make the " ' judgments of other States domestic judgments " ' to all intents and purposes, but only gave a " ' general validity, faith and credit to them as " ' evidence.' No execution can issue upon such " judgment without a new suit in the tribunals " of other States. And they enjoy not the right " of priority or lien which they have in the State " where they are pronounced, but that only which " the *lex fori* gives to them by its own laws in their " character of foreign judgments " (*Story's Conflict* " *of Laws*, §609; *Thompson* vs. *Whitman*, 18 *Wall*, " 457, 462, 463).

" A judgment recovered in one State, as was " said by Mr. Justice Wayne, delivering an earlier " judgment of this court, ' does not carry with it " ' into another State the efficacy of a judgment " ' upon property or persons to be enforced by exe- " ' cution. To give it the force of a judgment in " ' another State it must be made a judgment

"'there; and can only be executed in the latter
"'as its laws may permit' (*McElmoyle* vs. *Cohen*,
"13 Pet., 312, 325)."

This case overruled certain decisions of different State courts which had considered themselves bound by the Constitution and act of congress to entertain an action on a judgment of another State simply because it was a judgment, and established the proposition that the courts of one State may decline to enforce a judgment rendered in another State, and are justified in so doing when the cause of action originally sued on is of such nature that if the action were on it instead of on the foreign judgment jurisdiction would be declined.

The case of *Huntington* vs. *Attrill* (146 U. S., 657) presented a similar question in a different form. Huntington had procured judgment in New York against the defendant for making a false report as director of a corporation. He then brought a creditor's suit in Maryland, alleging the New York judgment and also the original cause of action. The Maryland court declined jurisdiction on the ground that the action in New York was to recover a penalty for violation of a local law. The decision of the Maryland court was reversed as not giving full faith and credit to the New York judgment, because, in the opinion of this Court, the statute upon which that judgment rested was not penal in the international sense, but conferred upon the creditor of the corporation a civil right which might be enforced anywhere.

The result of these two decisions is that the courts of one State are not *bound* to entertain an action upon a judgment rendered by a court of another merely because such judgment exists and is produced. It must also be made to appear by appropriate pleading that the original cause of action was one which the plaintiff has a constitutional right to sue on in the court which is asked to enforce the foreign judgment.

The recent decision of this Court in *Andrews* vs. *Andrews*, 188 U. S. 14, is also in point to show that "full faith and credit," does not always require the courts of one State to recognize much less enforce the judgments of another.

If this be not so—if the position of the learned counsel for appellant that the mere existence of the Illinois judgment requires the courts of New York to enforce it by a new action based upon it be correct—then it follows that all causes of action which may exist locally in any and every State may be enforced in every other State by the simple process of putting them into judgment in the State where they originally accrued (127 U. S. 290 *per* Gray, *J*).

Conceding that in Illinois the judgment now in question was "indisputable evidence of an invulnerable cause of action" (*Sanborn, J.*, in *Keyser* vs. *Lowell*, 117 Fed. Rep., 400, 406), and that the courts of New York must so regard it, if they look at it at all yet there is here a deeper question: Is the State of New York bound to look at it at all?

Before any question can arise under the "full faith and credit" clause, the judgment to which such faith and credit ought to be attributed must be regularly presented by the person claiming the benefit of the Constitution to the appropriate branch of the government of another State, to the end that such action as the occasion demands may be taken thereon. This presupposes that the person claiming the protection of the Constitution has a right under that Constitution to so present his judgment and demand such action. If he have not such right, the State to which he addresses himself and which simply ignores him, does not by so doing deny full faith and credit to the "judicial proceedings" of another State.

This leads to the next inquiry: Had the plaintiff a right secured to it by the Constitution and laws of the United States to demand action from the State of New York against The Davis Company.

SECOND.

The State of New York has the right to exclude from its courts foreign controversies between foreign corporations.

It may be conceded that the right to sue in the ordinary courts of justice of any State is one of the "privileges and immunities" secured by section 2, article 4 of the Constitution to the citizens of every other State.

> Blake *vs.* McClung, 172 U. S., 239, 256.
> Eingartner *vs.* The Illinois Steel Co., 94 Wis., 70.

A corporation, however, is not a citizen within this section.

It may be said that in limiting the jurisdiction of its courts over suits between foreign corporations the State of New York has denied the equal protection of its laws in violation of the Fourteenth Amendment. But the present plaintiff, being an Illinois corporation, is not "within the jurisdiction" of New York, and so is not entitled to the "equal protection" of its laws.

> Blake *vs.* McClung, 172 U. S., 239, 260, 261.

International comity no doubt accords to foreign corporations the privilege of suing in the local courts.

> Bank of Augusta *vs.* Earle, 13 Pet., 519, 591.

The State of New York has recognized this principle and in express terms opened its courts to foreign corporations, and placed them on the same footing as those of its own creation as regards claims against its own residents, or affecting property within its jurisdiction (Code of Civil Proc., sec., 1779; p. 2, ante). This would seem to be all that courtesy requires of it. It has also declared its public policy to be that its

courts shall not be vexed with the controversies of strangers originating without its limits.

Robinson *vs.* Oceanic Steam Nav. Co., 112 N. Y., 315.

Hoes *vs.* N. Y., N. H. & H. R. R., 173 N. Y., 435, 441.

So also the Courts of New York decline jurisdiction of transitory actions between non-residents based upon personal wrongs done without the State, even when the parties are both natural persons and, of course, citizens of another State.

Collard *vs.* Beach, 81 App. Div., 582.

Whether the limitations of section 1780 of the New York Code, so far as they affect a non-resident who is a "citizen" and, therefore, within the protection of article 4, section 2 of the Constitution, are valid is not now in question. The title of such citizen to the right to sue rests upon a foundation more solid than "comity."

There can be no question of the right of a State to absolutely exclude from its territory foreign corporations, excepting, perhaps, those engaged in inter-State commerce and those used as instrumentalities of federal government.

Waters-Peirce Oil Co. *vs.* Texas, 177 U. S., 28.

The right to sue is a franchise conferred upon a corporation by its charter and the law of its creation. How far the law of the State which created it and give it that right shall be recognized and enforced in another State is for that other State to determine.

Bank of Augusta *vs.* Earle, 13 Pet, 519, 589.

The recognition which one State accords as a courtesy to another by recognizing its laws, may of course be

withdrawn or withheld at pleasure. Accordingly the State of New York has by the statute now in question withheld that courtesy so far as it would be needed to enable one foreign corporation to assert against another a foreign cause of action.

THIRD.

The law in question—section 1780 of the New York Code—is one defining and limiting the jurisdiction of the court as regards subject-matter.

The nature of the jurisdiction of the Supreme Court of New York as regards foreign corporations has given rise to some difference of judicial opinion.

In *McCormick* vs. *Penn. R. R. Co.*, 49 N. Y., 303 (decided in 1872 and before the enactment of the law now in question), the plaintiff was a non-resident, the defendant a foreign corporation, and the cause of action arose without the State. It was held that the Court had jurisdiction of the subject-matter and that the general appearance of defendant gave jurisdiction of the person. The action was maintained although a new trial was ordered.

The Code of Civil Procedure, as regards section 1780, the law now in question, was enacted to take effect on September 1, 1880.

Robinson vs. *Oceanic Steam Nav. Co.*, 112 N. Y., 315, came before the Court of Appeals in 1889. Conditions were similar to those of the *McCormick* case, *i. e.*, plaintiff was a non-resident, defendant a foreign corporation, and the cause of action arose without the State. Defendant appeared generally and answered to the merits. It then moved to dismiss the action because the court had not jurisdiction of it. The motion

prevailed, the Court of Appeals holding that section 1780 of the Code of Civil Procedure had changed the law and in effect overruled the *McCormick* case. EARL, *J.*, says (p. 322):

> "The Supreme Court, being a court of general "jurisdiction, could, independently of any statute, "entertain actions against foreign corporations. "Such corporations could, by the common law, al- "ways be sued in this state by any plaintiff for "any cause of action provided jurisdiction could "be obtained of their persons. * * *
>
> "Thus the law remained until the Code of "Civil Procedure was enacted. (Section 1780 see "p. 2, *ante*). Under this section a resident of this "state, or a domestic corporation, can maintain an "action against a foreign corporation for any "cause of action, no matter where it arose. But an "action by a non-resident plaintiff against a for- "eign corporation can be maintained *only* in the "cases specified, and in no case for a cause of ac- "tion which arises outside of the state limits. "The jurisdiction of the courts is defined and lim- "ited, and absolutely confined to the cases speci- "fied."

In *Barker* vs. *Cunard Steamship Co.*, 91 Hun, 495 decided in 1895, VAN BRUNT, *P. J.*, with the *Robinson* case before him, says (p. 500):

> "In respect to foreign corporations the Supreme "Court has never been a court of general juris- "diction. It has no jurisdiction of actions against "foreign corporations, except such as is conferred "by statute."

These words of Judge Van Brunt were quoted with approval by the Appellate Division in the present case (Record, p. 6). Whether the jurisdiction of the Supreme Court of the State as regards foreign corporations be "general" or not, it is evident that the effect

of section 1780 was to limit that jurisdiction as regards the subject-matter rather than the person. In *Robinson* vs. *Oceanic Co.* jurisdiction of the person was complete by reason of the voluntary appearance of defendant, but jurisdiction of the subject-matter failed because of the statute. To quote again from the opinion of EARL, *J.* (112 N. Y., 324):

> "It is not sufficient that a non-resident plaintiff
> "should by any service of process or in any other
> "way obtain jurisdiction of a foreign corporation;
> "but before the action can be maintained in any
> "court of this state there must also be jurisdic-
> "tion of the subject-matter of the action."

See also Cromwell *vs.* Royal Canadian Ins. Co., 49 Md., 366, 383.

Courts being the creation of the state in which they exist, what power they shall possess is, of course, for that state to say.

Missouri *vs.* Lewis, 101 U. S., 22.

In the case cited BRADLEY, *J.*, says (p. 30):

> "It is the right of every State to establish such
> "courts as it sees fit, and to prescribe their
> "several jurisdictions, as to territorial extent,
> "subject-matter and amount, and the finality and
> "effect of their decisions, provided it does not
> "encroach upon the proper jurisdiction of the
> "United States, and does not abridge the privi-
> "leges and immunities of citizens of the United
> "States, and does not deprive any person of his
> "rights without due process of law, nor deny to
> "any person the equal protection of the laws, in-
> "cluding the equal right to resort to the appro-
> "priate courts for redress."

The legislation of New York now in question does not, of course, encroach upon the jurisdiction of the United States. It does not as regards this plaintiff,

abridge the privileges and immunities of citizens of the United States, for plaintiff is not such citizen. It has not been claimed to deprive plaintiff of property without due process of law. If it does deny the equal protection of the laws, it is not for that reason invalid because plaintiff, not being within the jurisdiction of New York, is not entitled to such protection.

Plaintiff in error relies in the case of *Christmas* vs. *Russell*, 5 Wall., 290, and the cases which have followed it—*Dodge* vs. *Coffin*, 15 Kan., 277, and *Keyser* vs. *Lowell*, 117 Fed. Rep., 400.

But the State statute overthrown in each of those cases was very different from that now in question. The first case involved a statute of Mississippi to the effect that no action could be maintained in the courts of that State against a resident upon a judgment rendered in another State upon a cause of action which by the laws of Mississippi, was barred at the time the action in the foreign State was begun. This statute was held repugnant to the full faith and credit clause. In *Dodge* vs. *Coffin*, a similar statute of Kansas was held void on the authority of *Christmas* vs. *Russell*, and in *Keyser* vs. *Lowell*, a like statute of Michigan was similarly treated by the Circuit Court of Appeals.

In each of the three cases cited the person attacking the statute was an individual citizen of the United States and so clothed with a constitutional right to sue upon any cause of action which he might have in the courts of any State where he could find his adversary and had a right to present his foreign judgment to the courts of that State and demand appropriate action thereon. That judgment being "indisputable evidence of an invulnerable cause of action" in the State where it was rendered could not be otherwise treated in the State to which it was presented, subject of course to investigation as to jurisdiction and matters happening since the rendition of the judgment. The cases cited are not authorities in support of plaintiff's claim

unless it be first established that a foreign corporation has a *right* to present even "an invulverable cause of action" to the New York court and demand action thereon.

FOURTH.

Several grounds of defense were asserted, one or more of which did not involve any federal question and was broad enough of itself to sustain the judgment.

Several grounds of demurrer were assigned.

First—That the court had not jurisdiction of the person of defendant.

* * * * * *

Third—That the complaint does not state facts sufficient to constitute a cause of action (p. 3).

New York practice sanctions such demurrer and requires that the issues of law raised by it should be disposed of by a formal and responsive decision (*Village of Palmyra* vs. *Wynkoop*, 53 Hun, 82). The trial court accordingly found that it had *not* jurisdiction of the *person* of defendant and that the complaint did *not* state facts sufficient to constitute a cause of action (p. 4).

The finding that the court had not jurisdiction of the person of defendant means that the Davis Company is not subject to the jurisdiction of the New York courts.; not that there was any defect in the service of process.

Ogdensburgh & L. C. R. R. Co., *vs.* Vermont & Canada R. R. Co., 16 Abb. Pr., [N. S.] 249; affirmed, 4 Hun, 712.

Belden *vs.* Wilkinson, 44 N. Y. App. Div., 419.

In *Ogdensburgh & L. C. R. R. Co., vs. Vermont & Canada R. R. Co.*, 16 Abb. Pr. [N. S.], 249, JAMES, *J.*, says (p. 255):

> "At common law the courts of this State had no "jurisdiction of the persons of foreign corpora- "tions, nor have our statutes provided any mode "whereby the personal appearance of foreign cor- "porations can be compelled. Such companies "may be proceeded against by attachment, and if "property is seized, judgment may be rendered "against such property without a personal appear- "ance by the defendant. It is only in cases of "voluntary appearance that our courts can have "jurisdiction of the persons of foreign corpora- "tions. (*McCormack vs. Penn. R. R. Co.*, 49 "*N. Y.*, 303.)

Since the above case was decided (1874) the Code of Civil Procedure has been enacted and the laws relating to corporations revised. Jurisdiction has perhaps been enlarged in one direction and limited in another.

Construction of the statutes fixing the jurisdiction of the State courts is for those courts alone.

New York law requires a foreign corporation before it may do business there, to appoint an agent within the State on whom process may be served (General Corporation Law, secs. 15 and 16). There is nothing in the record to show that the Davis Company ever did business in New York or had any agent or property therein. It would be in accordance with the decisions of this Court to hold that it was not subject to the jurisdiction of the courts of that State.

Goldey *vs.* Morning News, 156 U. S., 518.
St. Clair *vs.* Cox, 106 U. S., 350, 359.
Conley *vs.* Mathieson Alkali Works, 190 U. S., 406.

Whether defendant by its pleading or manner of defense appeared generally in the case so as to submit

itself to the jurisdiction was wholly a question of State law.

Jones *vs.* Jones, 108 N. Y., 415, 426.

The State court by deciding that there was no jurisdiction of the person, evidently held that defendant had not voluntarily submitted to its jurisdiction.

Whether the defendant is or is not amenable to the power of the New York court would seem to be a question of state law, and one which does not involve the Federal question sought to be raised. The State of New York may be ready and willing to do its utmost to render effectual the Illinois judgment; it may be eager and anxious to give it the "full faith and credit," which the Constitution requires, but if the party against whom that judgment was rendered, and against whom it must, if at all, be enforced is not within its limits, or subject to its power, what *can* it do? It would seem therefore that when it was decided that jurisdiction of the *person* was wanting, there was nothing left for the New York court to do but to dismiss the complaint—which it did (p. 5). The judgment was one of non-suit merely and will not embarrass the plaintiff elsewhere.

Genet *vs.* D. & H. C. Co., 170 N. Y., 278.

So also the finding that the complaint did not state facts sufficient to constitute a cause of action, was enough, standing alone, to sustain the judgment, and seems to be wholly aside from the Federal question.

The Court has many times decided that on writ of error to a state court, if it appear that there were grounds sufficient to sustain the judgment, not involving the Federal question sought to be raised, it will not review the judgment, but dismiss the writ.

Eustis *vs.* Bolles, 150 U. S., 361.
Harrison *vs.* Morton, 171 U. S., 38.
Pierce *vs.* Somerset Rwy., 171 U. S., 641.

It may be said that the rulings of the state court as to the jurisdiction of the person of defendant and

as to the sufficiency of the pleading, were erroneous. But they are questions of state law as to which the decision of the state court is final. This Court therefore is bound to assume them to have been correctly decided. It follows, therefore, that even if it be assumed that the state court was in error as to the Federal question, yet as the lack of jurisdiction over the person of defendant, is a ground broad enough to maintain the judgment this Court cannot review it.

Murdock *vs.* Memphis, 20 Wall, 590.
Jenkins *vs.* Loewenthal, 110 U. S., 222.
Rutland Rd. *vs.* C. V. R. R., 159 U. S., 650.
Bacon *vs.* Texas, 163 U. S., 207, 277.

FIFTH.

No right, privilege or immunity under the Constitution or laws of the United States was specially set up or claimed in the trial court.

It may be argued that some provision of the Constitution or laws of the United States secures to the plaintiff the right to sue in the New York courts, which right has been denied by the present judgment, thus bringing the case within the third class of cases of which this Court has jurisdiction under section 709 of the Revised Statutes. That section requires that such right, if relied on, must be specially set up or claimed. This means claimed at the proper time and in the proper way.

Mutual Life Ins. Co. *vs.* McGrew, 188 U. S., 291.

"The proper time is in the trial court whenever that "is required by the state practice" (188 U. S., 308). New York practice does so require.

Dodge *vs.* Cornelius, 168 N. Y., 242.
Purdy *vs.* Erie R. R. Co., 162 N. Y., 42.
Erie R. R. Co. *vs.* Purdy, 185 U. S., 148.

"The proper way is by pleading, motion, exception "or other action, part, or being made part, of the rec- "ord showing that the claim was presented to the "court" (188 U. S., 308).

There is nothing whatever in the present record to show that any, or, if any, what constitutional right was claimed or asserted in the trial court. The pleadings are silent. No motion was made. No exception taken. No opinion rendered (p. 5).

SIXTH.

The judgment should be affirmed or the writ of error dismissed.

November , 1903.

FRANK E. SMITH,
THOMAS F. CONWAY,
Counsel for Defendant-in-error.

Supreme Court of the United States.

No. 64.—October Term, 1903.

The Anglo-American Provision Company, Plaintiff in Error, *vs.* Davis Provision Company. } In error to the Court of Appeals of the State of New York.

[November 30, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of error to the Court of Appeals of New York. The parties are both Illinois corporations, and the plaintiff in error brought suit in the New York Supreme Court upon an Illinois judgment. By the New York Code of Civil Procedure, § 1780, it is provided that "an action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only: . . . 3. Where the cause of action arose within the State, &c." The other cases are immaterial. The complaint does not allege that the original cause of action arose within the State, if that would make any difference in the result. The complaint was dismissed by the Supreme Court on a demurrer setting up the above section, and the judgment was affirmed by the Appellate Division and by the Court of Appeals. 169 N. Y. 506. It was argued below that, under article IV, section 1, of the Constitution of the United States, the State could not thus exclude foreign corporations from suing upon judgments obtained in another State, because to do so was to deny full faith and credit to those judgments. The decision to the contrary is the error assigned.

The State court decides that the cause of action did not arise within the State in the sense of the words of the code, and, of course, we follow its construction, subject to the inquiry whether the statute as construed is consistent with the Constitution of the United States. See *Northern Central Railway Co.* v. *Maryland*, 187 U. S. 258, 267. The court also decides that the language quoted goes to the jurisdiction of the court.

We are of opinion that the section of the code as construed is not unconstitutional. The precise point has not been decided by this Court, but it has been laid down in cases which raise greater difficulties than the present, that this provision of the Constitution establishes a rule of evidence rather than of jurisdiction. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 291; *Andrews* v. *Andrews*, 188 U. S. 14, 36. The Constitution

does not require the State of New York to give jurisdiction to the Supreme Court against its will. If the plaintiff can find a court into which it has a right to come, then the effect of the judgment is fixed by the Constitution and the act in pursuance of it which Congress has passed. Rev. Stat. § 905. But the Constitution does not require the State to provide such a court. See *Missouri* v. *Lewis*, 101 U. S. 22, 30. If the State does provide a court to which its own citizens may resort in a certain class of cases, it may be that citizens of other States of the Union also would have a right to resort to it in cases of the same class. *Blake* v. *McClung*, 172 U. S. 239, 256. But that right, even when the suit was upon a judgment of another State, would not rest on the first section of article IV, on which alone the plaintiff relies or can rely, but would depend on the second section, entitling the citizens of each State to all privileges and immunities of citizens in the several States. The plaintiff is not a citizen within this section, *Paul* v. *Virginia*, 8 Wall. 168; *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28, 45, and did not set it up. The general power of a State to restrict the right of a foreign corporation to sue in its courts is assumed in *Bank of Augusta* v. *Earle*, 13 Pet. 519, 589–591. As to discrimination against non-residents, see *Chemung Canal Bank* v. *Lowery*, 93 U. S. 72.

The plaintiff lays great stress upon *Christmas* v. *Russell*, 5 Wall. 290. In that case suit was brought in Mississippi on a Kentucky judgment against a citizen of Mississippi upon a promissory note made in Mississippi and payable in New Orleans. A suit upon the note would have been barred by the Mississippi statute of limitations when the suit in Kentucky was begun, and the defendant set up a statute of Mississippi providing that no action should be maintained upon a judgment rendered in such circumstances without the State against a resident of the State. It was held that the statute was void, and that as the judgment was valid in Kentucky it could not be treated as invalid in Mississippi. It will be observed that this was a suit by a citizen. There was no suggestion that the statute went to the jurisdiction of the court. Obviously it did not. Indeed, the suit was brought in the United States Circuit Court. The statute made no discrimination in the right to come into court, according to the character of the plaintiff or of the cause of action, but attempted to create a defense against a plaintiff assumed to have a right to come into court and to invoke the jurisdiction. But when the plaintiff was in court and exhibited his judgment, it was too late for the State to interfere. In the case at bar the plaintiff had no right to come into the New York Supreme Court.

What, if any, limits there may be to State restrictions upon the jurisdiction of State courts, when such restrictions do not encounter article IV, section 2, of the Constitution, it is unnecessary to discuss. But we think

it too plain for further argument that the New York restriction upon suits by foreign corporations against foreign corporations is not affected by either section 1 or section 2 of article IV. It will be time enough to consider the suggestion that the law is an interference with interstate commerce, within *Cooper Manuf. Co.* v. *Ferguson*, 113 U. S. 727, 734, when the record presents it. The question is one of degree, and it is obvious that the supposed interference is very remote. See *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, 616.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.